

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1906.

No. 1637.

409

No. 10, SPECIAL CALENDAR.

LOUIS A. JOHNSON, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 28, 1905.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

LOUIS A. JOHNSON, Plaintiff in Error, }
vs. } No. 1637.
THE DISTRICT OF COLUMBIA.

a No. 280,234.

In the Police Court of the District of Columbia, November Term,
1905.

DISTRICT OF COLUMBIA } Information for Violation of an Act to
vs. } Prevent the Spread of Contagious Dis-
LOUIS A. JOHNSON. } eases.

Be it remembered, that in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:—

1 (*Information.*)

In the Police Court of the District of Columbia, November Term,
A. D. 1905.

THE DISTRICT OF COLUMBIA, ss :

Edward H. Thomas, Esq., Corporation Counsel, by James L. Pugh, Jr., Esq., Assistant Corporation Counsel, who for the District of Columbia, prosecutes in this behalf in his proper person, comes here into Court and causes the Court to be informed and complains that Louis A. Johnson, late of the District of Columbia aforesaid, on the 19th day of October, in the year A. D. nineteen hundred and five, in the District of Columbia aforesaid, being then and there a registered physician in charge of a certain person infected with a contagious disease, to wit: dip-theria, did fail and neglect to report the same to the Health Officer of the District of Columbia within twenty-four hours after becoming aware of the existence of said disease, on form furnished by the said Health Officer, to wit: a case of dip-theria in the person of one Mildred Carey, contrary to and in violation of an Act of Congress approved December 20th 1890, and constituting a law of the District of Columbia.

EDWARD H. THOMAS,
Corporation Counsel,
By JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared JOHN E. WALSH this 28th day of November, A. D. 1905, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

[Seal Police Court of District of Columbia.]

N. C. HARPER,
Deputy Clerk of the Police Court of the District of Columbia.

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA	} No. 280,234.
vs.	
LOUIS A. JOHNSON.	

Comes now the defendant and moves the court to grant a new trial in the above entitled cause upon the following grounds:—

1st. The verdict is contrary to the evidence.

2nd. The verdict is contrary to the law.

GITTINGS & CHAMBERLIN,
Attorneys for Defendant.

[Endorsed:] Filed Dec. 1, 1905. Joseph Y. Potts, clerk Police Court, D. C.

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA	} No. 280,234.
vs.	
LOUIS A. JOHNSON.	

Be it remembered at the trial of this case which came on for a hearing before Judge Mallowney on Tuesday, the 28th day of November, 1905, James L. Pugh representing the District of Columbia and John C. Gittings representing the defendant; the defendant admitting that he was a registered and practicing physician, who on the 19th day of October, 1905 was the physician in attendance at the Woman's Dispensary, situate at the corner of Four-and-a-half Street and Maryland Avenue, Southwest; that one Mildred Carey, an infant, attended by her mother, called at the Institution, and upon being told the history of the case and after a casual examination, and being of the opinion that it was a case of diptheria, the defendant refused to treat the child and suggested that the mother take the child home, isolate it from the rest of the family, and call in a physician. Upon this admission the District of Columbia rested its case and the defendant took the stand in his own behalf, testifying as follows:—

That he was one of the physicians in attendance upon the Woman's Dispensary, which is a charitable institution supported wholly by a small allotment from the Board of Charities, and dona-

tions from such patients as are able to pay ten cents; that his connection with the Institution was purely out of charity, receiving no compensation whatever therefor; that the Dispensary was
 4 open from the hours of 1 to 3 each day, except Sundays, for the treatment of diseases of women and children; that it was one of the rules of the Institution that no contagious diseases could be treated by the physicians at said Institution; that there were absolutely no facilities for that purpose; that it had been the universal custom of the Institution, immediately upon ascertaining that the person is suffering from a contagious disease, to refuse to treat it; that in the case of the infant Mildred Carey, who came to the Institution accompanied by her mother, who stated to the defendant that the child had a sore throat, the defendant made a provisional diagnosis, examined the child's throat and from the history of the case and the conditions then existing, he diagnosed it as dip-theria; that defendant refused to treat it as aforesaid, and did not prescribe for the infant in any manner; and refused to take charge of the case. In all cases of dip-theria and scarlet fever which came under his charge, he uniformly complied with the Act of Congress approved December 20th, 1890, and at his office he had blanks or postal cards provided by the Health Department for such cases that came under said act. The following is one of the blanks:

Dip-theria or Scarlet Fever.

WASHINGTON, D. C., —, 190—.

To the Health Officer, D. C.:

I respectfully report the following case of.....
 under my treatment.

Full name of patient.....
 Age.....yrs.....mos..... days. Color.....
 Location (street and number).....
 Children from house attend school at.....School
 Building.

....., M. D.,
 Address.....

5 It had never been the custom of said Institution to have the physicians to report cases coming under their observation while in attendance upon said Woman's Dispensary and did not report said case; that in fact there were no blanks provided by the Health Department to said Institution.

Thereupon the defendant rested and the Government produced as a witness one Dr. WALSH, who testified that he had examined the culture said to have come from the infant Mildred Carey, and said culture showed that said person from whom it came was suffering from dip-theria. This in substance was all of the evidence.

Thereupon the defendant moved the Court to render a verdict of not guilty, and discharge the defendant on the ground that the evi-

dence conclusively established the fact that the said infant was not in charge of the defendant, and was not prescribed for by the defendant, and the defendant in all respects complied with the laws in relation to such matters in existence in the District of Columbia. But the Court overruled said motion and counsel for the defendant noted an exception, and gave notice in open Court of his intention to apply for a writ of error to the Court of Appeals of the District of Columbia to review the same. The Court thereupon rendered a verdict of guilty, and imposed a fine of \$25.00 and in default 60 days in the work house, all of which exceptions were duly noted at the trial and signed by the presiding Justice of said Court this 1st day of December, A. D. 1905 *nunc pro tunc*.

(Signed)

ALEXANDER R. MULLOWNEY,
Judge Police Court, D. C.

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(*Copy of Docket Entries.*)

No. 280,234.

In the Police Court of the District of Columbia, November Term,
A. D. 1905.

DISTRICT OF COLUMBIA	}	Information for Violation of an Act to Prevent the Spread of Contagious Diseases.
VS.		
LOUIS A. JOHNSON.		

Defendant arraigned Tuesday, November 28, 1905. Plea: Not guilty. Judgment: Guilty. Exceptions taken to the rulings of the Court on matters of law and notice given by the defendant in open court at the time of the several rulings of his intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error. Continued to Nov. 29, Dec. 1.

Dec. 1, 1905.—Motion for a new trial filed, argued and overruled. Sentence: To pay a fine of twenty-five dollars and, in default, to be committed to the workhouse for the term of 60 days.

Recognizance in the sum of one hundred dollars entered into on writ of error to the Court of Appeals of the District of Columbia upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in the Police Court and abide by and perform its judgment, and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Charles H. Johnson, surety. Thereupon proceedings stayed for ten days.

Bill of exceptions filed, settled and signed.

Dec. 13, 1905.—Writ of error received from the Court of Appeals of the District of Columbia.

7 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, N. C. Harper, Deputy Clerk of the Police Court of the District of Columbia, acting in the absence of the Clerk, do hereby certify that the foregoing pages, numbered from 1 to 6 inclusive, to be true copies of originals in cause No. 280,234 wherein The District of Columbia is plaintiff and Louis A. Johnson defendant, as the same remain upon the files and records of said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Seal Police Court of District of Columbia, — the City of Washington, in said District, this 27th day December, A. D. 1905.

N. C. HARPER,

Deputy Clerk Police Court, Dist. of Columbia.

8 UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable Alexander R. Mallowney, judge of the police court of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and Louis A. Johnson, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 13th day of December, in the year of our Lord one thousand nine hundred and five.

HENRY W. HODGES,

Clerk of the Court of Appeals of the District of Columbia.

Allowed by

SETH SHEPARD,

Chief Justice of the Court of Appeals

of the District of Columbia.

Endorsed on cover: District of Columbia police court. No. 1637. Louis A. Johnson, plaintiff in error, vs. The District of Columbia. Court of Appeals, District of Columbia. Filed Dec. 28, 1905. Henry W. Hodges, clerk.